

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTELLISOFT, LTD.,

Plaintiff,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant.

No. C 12-1462 PJH

**ORDER RE MOTION TO DISMISS;
ORDER STAYING CASE**

The motion of defendant International Business Machines Corporation ("IBM") for an order dismissing the claims asserted against it in the first amended complaint ("FAC") came on for hearing before this court on September 12, 2012. Plaintiff Intellisoft Ltd. appeared by its counsel J. Paul Gignac, and IBM appeared by its counsel Peter Stone and Erica Schulz. Having read the parties' papers and carefully considered their arguments, and good cause appearing, the court hereby rules as follows and for the reasons stated at the hearing.

The motion to dismiss the FAC based on the doctrine of laches, and motion to dismiss for lack of standing are DENIED, as the court finds that these issues can only be properly addressed in a motion for summary judgment, based on a factual record.

The motion to dismiss the FAC based on the running of the statute of limitations is GRANTED with leave to amend to allege facts showing that the running of the statute was tolled based on application of the discovery rule. Because this issue is currently under appeal in the case of Bierman v. IBM, C-10-4199 PJH, the court finds that the present case

1 should be STAYED pending a ruling by the Ninth Circuit. The second amended complaint
2 will be due 30 days after the stay is lifted.

3 The motion to dismiss the FAC for improper claim splitting is DENIED, without
4 prejudice to renewing after the stay is lifted. Because the court is persuaded that no factual
5 development is likely to be required prior to resolving this issue, IBM can renew the
6 argument in a motion to dismiss for failure to state a claim directed at the second amended
7 complaint.

8
9 **IT IS SO ORDERED.**

10 Dated: September 13, 2012



PHYLLIS J. HAMILTON
United States District Judge